IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.145 OF 2006

Bhor Education Society, a Trust &
Society & anr. ..Petitioners.

Vs.

Anil Gulabrao Dhadve & Ors. ..Respondents.

...

Mr. A.S. Pratinidhi for the Petitioners.
Mr. M.H. Solkar, AGP for Respondent Nos.6 and 7.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

23rd June, 2006.

P.C. :

1. The First Respondent was proceeded against in disciplinary proceedings convened by the management. The First Respondent had been employed by the management as a Junior Clerk. The Tribunal has come to the conclusion that the disciplinary proceedings suffer from certain fundamental defects and consequently stood vitiated. However, liberty has been granted to the management to hold a fresh enquiry in accordance with law. The salient defects which were found in the disciplinary proceedings were as follows :

1) Under Rule 36(2)(a) of the Maharashtra Employees of

Private Schools Rules, 1981, the enquiry committee is to consist of three members (i) a member nominated by the management; (ii) a member nominated by the employee from amongst employees of any private school and (iii) one member chosen by the Chief Executive Officer from the panel of teachers on whom the State or national award has been conferred. In the present case, the management admittedly nominated two members of its own to conduct the enquiry. The enquiry committee was constituted of four persons. This is directly in the teeth of Rule 36(2)(a);

2) Even though the member nominated by the First Respondent had resigned mid way due to his transfer to Solapur, no opportunity was granted to the First Respondent to nominate a new member;

3) The names of the management's witnesses and documents relied upon to prove the charges were not communicated.

2. In these circumstances, the management has been permitted to hold a fresh enquiry after placing the First Respondent

under suspension. The order of the School Tribunal does not suffer from any error. Counsel appearing for the Petitioners, however, submits that the First Respondent had also filed a petition challenging the order of the Tribunal which was dismissed in default. It is needless to add that in the event the petition filed by the First Respondent is restored, all the rights and contentions of the parties will be kept open.

The Petition is dismissed.